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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1957

No. 12, Original

STATE OF CALIFORNIA, *Plaintiff,*

v.

STATE OF WASHINGTON, *Defendant.*

MOTION FOR LEAVE TO FILE A COMPLAINT WITH ATTACHED COMPLAINT.

EDMUND G. BROWN,
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STATE OF CALIFORNIA,	*Plaintiff,*
v.	
STATE OF WASHINGTON,	*Defendant.*

MOTION FOR LEAVE TO FILE A COMPLAINT.

The State of California, by Edmund G. Brown, its Attorney General, asks leave of the Court to file its complaint against the State of Washington, submitted herewith.

Dated, February 11, 1958.

EDMUND G. BROWN,
Attorney General of the State of California,
WALLACE HOWLAND,
Assistant Attorney General of the State of California,
LEONARD M. SPERRY, JR.,
Deputy Attorney General of the State of California,
Attorneys for Plaintiff.

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STATE OF CALIFORNIA,	*Plaintiff,*
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STATE OF WASHINGTON,	*Defendant.*

COMPLAINT.

The State of California, by Edmund G. Brown, its Attorney General, acting pursuant to a resolution of the California Legislature, brings this suit in equity against the State of Washington, and for its cause of action alleges as follows:

I.

SUMMARY STATEMENT OF THE CASE.

1. This is an action to enjoin and restrain the enforcement of statutes and regulations of the State of Washington which unreasonably discriminate against interstate commerce in wine produced in Cali-

fornia (referred to herein as "California wine") by citizens of California and transported into Washington.

2. The laws of the State of Washington permit the production of wine within and the importation and transportation of wine into that state for sale and consumption therein. Of all wine sold and consumed in Washington, about 50% is produced in Washington (referred to herein as "Washington wine"), about 45% in California, and about 5% in other states and in foreign countries. The discrimination herein complained of arises from the different methods prescribed by the laws of Washington for the distributing, marketing, sale and pricing of California wine moving in interstate commerce for distribution, sale and consumption in Washington, as compared with those prescribed for Washington wine moving in the local trade and commerce of that state, viz.:

(a) California wine is subjected to state monopoly control of its distribution, marketing and pricing within Washington from which Washington wine is exempt. As a result California wine is denied direct access to the competitive privately-owned channels of distribution through which Washington wine moves from producer to consumer.

(b) California wineries are denied the privilege, granted to and enjoyed by Washington wineries, to promote the purchase and use of their products by direct contact with licensed retailers throughout Washington.

(c) A public agency of the State of California, duly authorized and directed actively to promote the sale and use of California wine, is denied the opportunity to carry on in Washington sales promotion activities of a type and in the manner utilized by Washington wineries in promoting the sale and use of Washington wine.

The purpose and effect of this discriminatory scheme of regulation of the lawful traffic in wine is unreasonably to suppress competition in the distribution and sale of wine in Washington as between Washington wine and California wine and thereby to confer upon producers of Washington wine commercial, economic and other advantages over producers of wine located in California.

3. The Washington statutes and regulations are challenged in this action on the ground that:

(a) They discriminate between intrastate and interstate trade and commerce in the marketing and sale of wine in Washington in violation of the Commerce Clause of the United States Constitution; and

(b) They deny to citizens of California privileges granted by the State of Washington to its own citizens, in violation of the Privileges and Immunities Clause of Article IV, Section 2, of the Constitution.

(c) The resulting suppression of competition in the lawful Washington market between California wine transported into Washington in in-

terstate commerce and wine produced locally within that state is not authorized by the Twenty-first Amendment to the United States Constitution.

(d) The Washington laws here challenged are not intended to and do not have the effect of promoting the cause of temperance; they do not in design and effect make use of the police power of the State of Washington to protect and promote the public health, safety and morals of the people of that state; nor do they serve the legislative purpose which the Twenty-first Amendment was enacted to promote.

II.

JURISDICTION.

4. Jurisdiction over this case, to which a state is party, is vested in the original jurisdiction of this Court by Article I I, Section 2, Clause 2, of the Constitution of the United States. Further, since this is a controversy between two states, the jurisdiction of this Court is both original and exclusive by virtue of section 1251(a)(1) of Title 28 of the United States Code.

III.

CONSTITUTIONAL PROVISIONS INVOLVED.

5. The following provisions of the United States Constitution are involved in this action:

(a) Article I, Section 8, Clause 3, which confers upon Congress the power "to regulate Commerce . . . among the several states . . ."

(b) Article IV, Section 2, Clause 1, which provides: "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."

(c) Section 2 of the Twenty-first Amendment which provides: "The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited."

IV.

THE TRADE AND COMMERCE INVOLVED.

A. The Distribution of Washington Wine.

6. Since 1933, the statutes and regulations of the State of Washington have authorized under specified conditions the production, sale and consumption of wine within that state, and the importation and transportation of wine thereinto (Rev. Code Wash., Title 66). During the ten years last past the sale and consumption of wine in Washington has averaged about 2,000,000 gallons annually.

7. Within Washington there are 13 licensed wineries engaged in the production of wine from fruit grown in that state. During the year ended June 30, 1956, Washington wineries sold more than 1,100,000

gallons of Washington wine. All of this wine, except some 2,500 gallons, was sold within Washington and comprised about 50% of total wine sales in the State during that period.

8. More than 70% of all Washington wine is produced from grapes, the balance being produced from other fruits and berries. About 93% of all Washington grape wines contain more than 14% alcohol by volume, comprising what are known generically as "dessert wines". The balance are wines known generically as "table wines". All of these Washington grape wines are of types similar to those produced in California and are competitive therewith.

9. In contrast to the distribution of California wine in Washington (post, par. 14), the distribution of Washington wine from producer to ultimate consumer is carried on exclusively by privately-owned business establishments. There are in Washington 135 wine wholesalers licensed to purchase Washington wine from any winery located in Washington. Substantially all Washington wine is marketed by the wineries through the medium of these wholesalers. Each wholesaler sells and distributes Washington wine to retail licensees within a marketing area prescribed and designated by the winery producing the wine so distributed. For this purpose the wine wholesalers employ salesmen, most of whom have regular routes and schedules for calling upon the trade and soliciting orders. The sale of substantially all Washington wine to retail licensees involves direct contact between salesmen representing the wine wholesaler

and the retail licensee, generally in person and sometimes by telephone.

10. There are in Washington more than 4,800 privately-owned retail establishments licensed to sell wine, regardless of its place of origin, at retail to the ultimate consumer, for consumption either on the premises where sold, or elsewhere.[1] More than 4,000 of these retail licensees are licensed to sell wine in bottles not to be consumed on the premises where sold; most of these licensees are grocery stores, chain stores, supermarkets and taverns. More than 3,000 of these retail licensees are authorized to sell wine by the drink for consumption on the premises where sold; such licensees are for the most part taverns, restaurants, hotels, clubs and dining places on airplanes, boats and trains. Numerous licensees, notably the taverns, hold both types of license.

11. Although such conduct is prohibited to producers of California wine, producers and wholesalers of Washington wine deal directly with any or all of the 4,800 retail licensees in marketing and promoting the sale and consumption of their respective Washington wines. Washington wineries, acting individually or through the medium of a trade association, utilize the services of the wine wholesalers in distributing to retail licensees sales aids, merchandising displays and sales promotion literature intended for consumer use. Generally known to the trade as

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[1]As used herein the term "retail licensee" means only retailers licensed to sell *wine* under one or more of the several types of wine retail license issued by the State of Washington.

"point-of-sale" materials, they include literature describing the various types of wine, wine selection charts which show the preferred use of different types of wine, recipe books, and display materials such as cardboard bottle holders and bins, and devices to insert in opened bottles to aid the user in pouring wine.

12. The Washington wineries determine, each on the basis of its own judgment, in the light of competitive conditions in the market, the prices at which their respective wines shall be sold to the 4,800 retail licensees. There is no control whatsoever asserted by the State of Washington over the level of prices at which Washington wine is sold at any stage of its distribution from producer to consumer.

B. The Distribution of California Wine.

13. During the year ended June 30, 1956, about 1,100,000 gallons of wine were sold in Washington which were produced in other states and in foreign countries and imported or transported into Washington. Of this, more than 996,000 gallons, or better than 90%, was produced in California and transported into Washington. The value of such sales to California wine producers was approximately 2½ million dollars.

14. With the exceptions of wine produced in Washington and of beer containing not more than 4% of alcohol, the State of Washington monopolizes the sale of all alcoholic beverages in that state. For this purpose, the State of Washington, acting through the Washington State Liquor Control Board (herein-

after referred to as "the Board"), owns and operates 71 retail liquor stores in the more populous communities throughout the state. In addition, the Board has appointed, in cities and towns in which no state retail store is located, some 123 so-called "agencies" authorized to sell liquor at retail. The state retail stores and agencies are all supplied from a central warehouse at Seattle, Washington, to which all wine purchased by the Board is delivered.

15. Since 1948, and for some time prior thereto, the Board has not purchased, stocked or sold any wine produced in Washington. Under authority of the statutes herein complained of the Board purchases varying quantities of about 30 brands of California wine. Stocks of all the California wines so purchased by the Board are carried in each of the 71 state retail stores. The 123 so-called agencies of the Board stock and sell some but not all of the California wines purchased by the Board.

16. There are many types and brands of California wine besides those which are purchased by the Board for stocking state stores and agencies. In addition to the California wine purchased by the Board for this purpose, the Board will purchase other California wines pursuant to special orders therefor placed with the Board by retail licensees. Retail licensees do a substantial business in California wines obtained through such special orders. The Board, however, does not disseminate to retail licensees any information concerning the availability of these other California wines. Neither does it permit the California

wineries to contact retail licensees in Washington, by mail or otherwise, to promote their wines by making their availability known (Regulations, Wash. Liq. Cont. Bd. No. 113(d), 1956). Although the Board is the only source from which retail licensees in Washington can obtain California wine, it performs none of the sales promotion activities and services which the private wholesalers of Washington wine render to retail licensees in promoting the sale and consumption of Washington wine.

17. On June 30, 1956, the population of Washington dependent upon the Board as its only source of California wine, was estimated to be 2,667,000. In the twenty years prior to 1956 the population of Washington has grown more than 61% from an estimated 1,653,000 in 1936. During the same period consumption in Washington of wine produced in other states and in foreign countries as reflected by Board sales decreased more than 25% from 1,431,902 gallons in 1936 to 1,065,114 gallons in 1956. During this same period total consumption of all wine in Washington increased about 22%, from 1,865,226 to 2,276,713 gallons; whereas, the aggregate of wine sales in all of the other 16 states operating state liquor monopolies increased 324%, from 5½ million gallons in 1936 to 23½ million gallons in 1955.

V.

DESCRIPTION OF STATUTES, REGULATIONS AND OTHER ACTIONS OF THE STATE OF WASHINGTON DEEMED TO BE UNCONSTITUTIONAL.

18. The State of Washington, by statutes duly enacted,[2] administrative regulations promulgated pursuant to statutory authority, and other authorized official actions, discriminates against interstate trade and commerce in California wine in the following respects:

A. The Channels Through Which California Wine Must Be Distributed Are Monopolized.

19. Section 66.24.210 of the Revised Code of Washington provides:

> "All wines manufactured or produced in domestic [i.e., Washington] wineries may be sold by the manufacturer or producer thereof direct to persons holding licenses entitling them to sell wine at retail under the provisions of this title, or to licensed domestic wine wholesalers, or to licensed domestic wineries."

The same section, however, provides with respect to California wine that:

> "No wines except domestic [i.e., Washington] wines shall be sold within the state except to the liquor control board or by the board through the state liquor stores."

These provisions effectively establish a monopoly control over the sale and distribution within Washington

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[2]The several statutory sections and regulations referred to herein are set forth in full in Appendix A to this Complaint.

of all California wine. Washington wine, however, is expressly exempted from any such form of control.

B. Trade and Quantity Discounts Are Denied to Retail Licensees Purchasing California Wine for Resale.

20. The above mentioned provision that no wines except Washington wine "shall be sold within the state" except to or by the Board does not prohibit retail licensees from re-selling to consumers California wine purchased by such licensees from the Board. However, retail licensees can purchase California wine only from the state-owned stores and agencies (Regulations, Wash. Liq. Cont. Bd. No. 32(d), 1956). In so doing they are required to pay the same retail price per bottle as any individual consumer.

21. With respect to retail licensees authorized to sell in bottles not to be consumed on the premises where sold, it is provided that:

> "... Such licensee shall pay to the state liquor stores for such wines the current retail price." (Rev. Code Wash. § 66.24.370.)

22. Section 66.24.440 of the Revised Code of Washington establishes a discount of not less than 15% from retail prices fixed by the Board on sales to Class "H" retail establishments. These retailers are licensed to sell wine and other liquors for consumption on the premises where sold. While such 15% discount is granted on sales of distilled spirits and malt liquor of over 4% alcoholic content, the statute prohibits the granting of such discount on all wine sold

by the Board (§§ 66.24.440, 66.24.410). As noted above, the Board deals principally in California wine and not at all in Washington wine.

23. The Board makes no delivery of wine to retail licensees except at the Board's retail stores and agencies. The Board's retail price for each bottle of wine does not include the cost of delivery or cartage to the business establishment of the retail licensee. With respect to Washington wine, however, the Board requires that Washington wineries post "the delivered prices" at which Washington wine is sold to retail licensees, "which prices shall be uniform for all retailers within the state." (Regulations, Wash. Liq. Cont. Bd. No. 81, 1956.) Wholesalers of Washington wine not only deliver wine to the business premises of retail licensees but also generally make a practice of arranging shelf displays with the wine so delivered.

24. The effect of these provisions is that California wine resold by retail licensees to ultimate consumers, either by the bottle or by the drink, is subjected to two retail markups, one added by the state-owned retail store and the other by the licensed retail outlet re-selling to the consumer. This is contrary to the established practice, permitted by Washington law, concerning the pricing of Washington wine.

C. California Wines Are Subjected to Excessive and Unreasonable Markups and Minimum Prices.

25. Section 66.16.010 of the Revised Code of Washington authorizes the Board to fix the price of all liquor, including wine, sold at state-owned retail stores and agencies. Acting pursuant to this author-

ity, ever since 1941 the Board has determined its retail prices for California wine by applying to its landed cost an excessive and unreasonably high percentage of markup.

26. From its inception in 1933, until some time in 1941, the Board at all times uniformly applied the same markup to both the wines and the distilled spirits in which it dealt. Between 1941 and 1949 the Board applied a 35% markup to all table wines and distilled spirits, but increased the markup on dessert wines to 52%. To these markups were added applicable taxes. In 1949 the Board applied a markup of 49½% to distilled spirits, 58% to table wines, and 68% to dessert wines, to which was added a 3% sales tax.

27. Continuously since 1951, when applicable tax rates were last changed, the Board has adopted and utilized a markup of 45% for distilled spirits, 54% for table wines, and 68% for dessert wines, plus the applicable state sales tax of 10%. These differentials in markup, and especially those between table wines, of which Washington production is almost negligible, and dessert wines, which comprise the greater part of the production of Washington wine, were not based upon any considered difference in the cost of merchandising and doing business in these products, nor upon any considerations of breakage or spoilage, or other expense incurred in their handling. In fact, no cost studies were ever made by the Board as between the cost of handling wine or any classification of wine, and distilled spirits.

28. The said markups which have been adopted and used by the Board in the computation of its wine prices have at all times since June 1, 1947, been minimum markups. Continuously since that date the Board has implemented the said minimum markups on California dessert wines by also establishing arbitrary and unreasonably high minimum prices therefor. These minimum prices have been applied to California dessert wines regardless of the price at which they were purchased by the Board from the California producer. Continuously since about December 1, 1951, the said minimum price has been $0.92 per one-fifth gallon. During this period the Board has made purchases of California dessert wine at prices and at landed costs to the Board which resulted in the actual markup being well in excess of 100%.

29. The purpose and effect of such markups and minimum prices has been and is to further enhance the economic advantage and competitive position of the producers of Washington wines to the detriment of the California wine producers and the consuming public within the State of Washington.

D. California Wine Cannot Be Sold in the Same Size Containers as Washington Wine.

30. Section 66.08.050(5) of the Revised Code of Washington authorizes the Board to "determine the nature, form, and capacity of all packages to be used for containing liquor kept for sale", including wine. Pursuant to this authority, the Board, by regulation, permits Washington wineries to utilize a wide variety of container sizes, including the economical and

popular pint size flat bottle or flask (Regulations, Wash. Liq. Cont. Bd. No. 66, 1956). A substantial and profitable business in this size is enjoyed by Washington wineries. The sale of flat pints of Washington wine is featured by certain types of retail licensees, notably the taverns. California wine, however, is available at the Board's retail stores only in fifth-gallon and one-gallon containers.

31. The Board maintains in its Seattle warehouse a stock of some twelve brands of California wine in one-tenth gallon round bottles, known in the hotel and restaurant trade as "one-half bottle" or "small bottle". With one exception, these are all table wines. This stock of tenth-gallon bottles is sold only in case lots pursuant to orders therefor placed at a state store or agency. Its sale to retail licensees is restricted to those purchasing for consumption on the premises operated by such licensees. These are principally hotels and restaurants. The Board has refused to sell California wine in tenth-gallon bottles to grocery stores and other retail licensees who sell for consumption elsewhere than on their premises. The sale of Washington wine, however, is under no such restriction. Tenth-gallons of Washington wine are stocked and sold by grocery stores and other retail licensees who sell for off-premises consumption.

E. Trade Promotion Work by California Wine Producers Is Subject to Discriminatory Restrictions.

32. Section 66.28.050 of the Revised Code of Washington prohibits any person, other than registered liquor salesmen dealing with the Board, from can-

vassing for, soliciting or receiving orders for the purchase or sale of California wine. However, the same section expressly permits producers and wholesalers of Washington wine to solicit orders from licensed retail wine outlets. As previously noted, retailers licensed to sell wine to consumers are not subject to any restriction based upon the place where such wine is produced.

33. In the same vein, by regulation the Board prohibits California wineries from engaging in any sort of trade promotion work with any of the 4,800 privately-owned licensed retail outlets in Washington. The regulation prohibits California wineries and their representatives from contacting or soliciting "directly or indirectly, by mail or otherwise" any retail licensee for the purpose of promoting or inducing the sale of California wine. The same regulation expressly exempts producers and wholesalers of Washington wine from this prohibition (Regulations, Wash. Liq. Cont. Bd., No. 113(d), 1956).

34. The statutes and regulations referred to in paragraphs 19 through 33, *supra,* have not been enacted or administered in the exercise of the police power of the State of Washington for the purpose of protecting the public health, safety and morals.

35. The intent and purpose of the said statutes, regulations and official action taken thereunder has been to confer a competitive economic advantage on Washington grape growers and wineries to the detriment of grape growers and wineries located in other states. By virtue of the geographic and climatic con-

ditions which largely control the American wine industry, these discriminations have their greatest effect upon wine produced in California.

VI.

EFFECTS OF THE DISCRIMINATORY WASHINGTON SYSTEM.

36. The effect of the statutes, regulations and other official acts of the State of Washington herein complained of his been and is that:

(a) The distribution of California wine in Washington has been monopolized by the State of Washington, while Washington wine is permitted to move through numerous, competitive and privately-owned channels of distribution selected and supervised by its producers;

(b) The minimum price at which California wine is available to consumers in Washington has been fixed and maintained by the State of Washington, as the monopoly distributor, at artificial and unreasonably high levels, whereas there is no control asserted by the State of Washington over the level of Washington wine prices at any stage of its distribution and marketing;

(c) The State of Washington, as monopoly distributor, sells California wine at the same price both to consumers and to retail licensees purchasing for resale, whereas those same retail licensees obtain Washington wine from sources which do not sell to consumers at any price. In

so doing, the State of Washington has destroyed the economic incentive of its retail licensees to deal in California wine;

(d) The promotion of the sale of California wine cannot be carried on by means of any contact, direct or indirect, between its producers and retail licensees in Washington. Neither the producers of California wine nor the State of California can promote the sale of California wine at the wholesale level because of the monopoly distribution of California wine in Washington and the refusal of the monopoly distributor to engage in any advertising or sales promotion work. The promotion of Washington wine is under none of these disabilities.

37. By reason of the foregoing, the quantity of California wine sold and consumed in Washington has been curtailed and, as a result, the public policies of the State of California in promoting the sale in interstate commerce of one of its principal resources have been frustrated, the economy of the State of California has been impaired, and its citizens discriminatorily denied the privilege of equal access to the channels of trade which lawfully supply wine to the consuming public in Washington. In placing the foregoing burdens upon interstate commerce in California wine, from which Washington wine is free, the State of Washington has been and is unreasonably discriminating against trade and commerce among the several states in violation of: (a) the Commerce Clause of the Constitution of the United States for

which neither justification nor authority can properly be found in the Twenty-first Amendment; (b) the Privileges and Immunities Clause of Article IV, Section 2, and (c) the Equal Protection Clause of the Fourteenth Amendment.

VII.

THE INTEREST OF THE STATE OF CALIFORNIA.

38. The State of California brings this action in its sovereign capacity:

(a) To assert and to protect its right as a state to perform functions of government in behalf of its people and, in so doing, to remain unrestricted and unhampered by officials acts of another state which contravene the Constitution of the United States;

(b) To discharge, in an appropriate manner, the obligation and duty imposed upon it by law to remove existing trade barriers against the sale of California wine which have no sanction in the Twenty-first Amendment; and

(c) To protect its economy against unwarranted discrimination by the official acts of another state and to obtain unobstructed access to the national market for a natural resource and industry which is so essential to the economy of the State that it is declared by law to be affected with a public interest.

A. The State's Trade Promotion Program.

39. It is the policy of the State of California to use the powers and the facilities of its governmental agencies to aid producers in the marketing of agricultural commodities including, specifically, grapes and the wine produced therefrom. (Calif. Agric. Code, §§ 1300.10, 1300.12(c), 1300.12a.) To effectuate this policy, the State has for many years engaged in an advertising campaign and a program of sales promotion activities of a commercial nature to promote the the sale and consumption of California wine. It carries on these activities in every state of the United States which does not prohibit, by its own laws, the sale and consumption of wine as a beverage and which permits advertising and promoting the sale of wine.

40. The administration and enforcement of the State's wine advertising and sales promotion program is a function of the California State Director of Agriculture (hereinafter referred to as the Director). Pursuant to the California Marketing Act of 1937 (Calif. Agric. Code, §1300.10 et seq.), in 1938 the Director issued a Marketing Order for Wine. Article III, section A of the Order in its current form provides:

> "There shall be established plans for advertising and sales promotion to maintain present markets or to create new or larger markets for wine produced in the State of California. Such plans may consist, insofar as funds are available, and as the [Advisory] Board may recommend and the Director approve, of programs of advertising, dealer service, trade promotion, publicity, market

development and expansion activities for the prevention, modification or elimination of trade barriers which restrict the free flow of wine produced in California to market, . . ."

41. To finance this program, the Director has approved a budget for the year ending June 30, 1958, for the expenditure of more than $2,700,000. To provide these funds, California law imposes a special form of excise tax upon each gallon of California wine prepared for market. The funds so provided are held and disbursed by the Director to defray the expense of the State's program. California law provides criminal penalties for violation of the Wine Marketing Order and the imposition and collection of the special form of excise tax has been upheld as a valid exercise of the State's police power.

42. The Director has approved and ordered into effect a wine advertising and sales promotion program comprising all of the activities described in the current program budget, a copy of which is attached hereto as Appendix B. The sales promotion activities of this program are carried on throughout the United States by 23 field service representatives of the State. Of these, 19 have business headquarters and are stationed in states other than California and as far distant as Boston, Massachusetts. In their promotion of the sale of California wine, 18 are assigned to work in territories comprising two or more states, in whole or in part. This distribution of manpower and the resulting concentration of sales promotion activities in other states reflects the fact that about 80% of all

wine produced in California moves in interstate commerce for distribution and sale to consumers located in states other than California.

43. Prominent in the sales promotion activities of the State is the preparation and distribution of large quantities of sales promotion material of the "point-of-sale" type. These include merchandising displays, posters and other forms of graphic sales aids intended for the use of wine retailers. They also include informational material intended for consumer use, such as wine selection charts, booklets describing the types and preferred uses of California wines, and recipe books. The annual cost of the preparation and production of these materials is about $150,000. They are produced in California and distributed to all states whose laws permit their use. Distribution throughout the Eastern states is made from a New York warehouse to which bulk shipments are made from California. The design, art work and content of these materials is largely the work of a national advertising agency employed for the purpose. The distribution, however, of these materials is a direct function of the State of California. It is effected largely on the basis of orders and requisitions for these materials received from the field service representatives stationed throughout the nation.

44. Each of the field service representatives has two motion picture films depicting the California wine industry and promoting the use of its products. Other copies of these films are held in reserve in California. These films are constantly being transported through

and into the several states for exhibition to groups of wine distributors, consumers and the general public, under the direction and at the instance of the field service representatives.

45. Other major features of the State's sales promotion program are the training classes for wine salesmen and "wine tastings" conducted by the field service representatives. Regular courses of instruction in the selection, care, use and serving of wine are given to the personnel of wine wholesaling organizations, selected retailers, and hotels and restaurants. Wine tastings are conducted for interested civic service and consumer groups. More than 80% of the California wine consumed in such instruction and demonstration is transported in interstate commerce from California to places of consumption in other states. In those states where the wine is purchased or procured from local stocks, there are generally communications and financial credits exchanged between persons in California and in such other states concerning the procurement of such wine.

46. It is estimated that throughout the United States there are about 3,800 wine wholesalers and about 285,000 retail outlets for wine. The expense of carrying on sales promotion work directly with any such number of retail outlets would be prohibitive. Experience has shown that the efficient and economical administration of the State's program depends upon the active assistance and cooperation of wine wholesalers. Effective use of their sales organizations, which have frequent and direct personal contact with

the retail trade which they serve, makes possible the promotion of California wine to an extent not otherwise attainable with the funds and personnel available. Hence, wine wholesalers are the focal point of contact with the wine distributing industry for the State's field service representatives. About 80% of the distribution of display materials and sales aids to wine retailers is made through the medium and agency of wine wholesalers. Likewise, about 70% of the informational literature intended for consumer use is distributed through the medium of wine wholesalers and their respective organizations. It is estimated that the greater part of the motion picture exhibitions, salesmen's instruction classes and wine tastings are the direct result of or are facilitated by the liaison which the field service representatives have with wine wholesalers throughout the several states where they exist. By reason of the discriminations complained of herein, the State of California has been and is effectively precluded from carrying on in Washington sales promotion activities of the kinds herein described and which are permitted by Washington law in furtherance of the sale and consumption of Washington wine.

B. The State of California Has Long Sponsored Its Vineyard and Wine Industry.

47. The police powers of the State have been invoked on seven different occasions since 1933 to direct and control the operations of the vineyard industry. Substantial quantities of the grapes grown in California may be used, alternatively, for marketing as

fresh fruit or for processing into either raisins or wine. Hence, the economic relationships between these three aspects of the vineyard industry are closely interrelated. From 40% to 60% of the California annual grape crop is processed into wine. The wine advertising and promotion program above mentioned has been in effect continuously since 1938. A comparable program of the State with regard to raisins has been in effect since 1949, with annual expenditures now in excess of $330,000.

48. Other substantial expenditures of public moneys of the State are made annually in research, the development of new and improved methods of viticulture and wine-making, extensive reporting and statistical services, and in enforcing health, sanitation and quality standards, all on behalf and in furtherance of the grape and vineyard industry, of which the wine industry is an inseparable part.

49. Such public interest and activity on the part of the State of California in the cultivation of grapes and the related wine industry is almost as old as state government in California. As early as 1859, the California Legislature exempted vineyards from taxation for a period of four years. When the vine disease of phylloxera was almost fatal to California vineyards in 1880, the State Board of Viticultural Commissioners was created. Ever since then the financial resources of the State derived from use of its taxing power and its police power have been utilized continuously to develop and promote the vineyard industry. The State financed and its University developed

the technique of grafting the European *vitis vinefera* upon the disease-resistant native vine stock which is the basis of the modern California industry. For many years last past the State has owned and operated an experimental vineyard and winery, valued at more than $500,000. Although operated and staffed by the University of California College of Agriculture, the practical results of its research and developmental work are more closely related to the work-a-day problems of an operating vineyard than to the educational curriculum of the University.

C. The Vineyard and Wine Industry Is Essential to the Economy of California.

50. California is the Nation's largest cultivator of grapes and its leading producer of wine. The yield from California vineyards exceeds that of all other states combined. In 1956 the estimated dollar value of the California grape production was $126 million out of a national total dollar value of $148 million. Agriculture is the dominant industry of the State, and grapes are the largest and most valuable of the crops grown for human consumption. Grapes are grown in 48 out of the 58 counties in the State. Bearing vineyards cover a total of 433,000 acres of land. There are about 2.8 million tons of grapes produced annually. The financial return to California farmers averaged more than 120 million dollars annually from 1950 through 1956. The output of the industry is approximately five times as great as those of the other 47 states combined, and the value of its properties enjoys a like preeminence. The value of Cali-

fornia vineyard and winery properties exceeds 500 million dollars. The industry furnishes direct employment to more than 100,000 persons.

51. During the last twenty years California has produced an annual average of about 85% of all wine, including foreign wine, commercially distributed and sold in the United States. During the past ten years California produced an annual average of about 115 million gallons of wine; all other states combined produced an annual average of about 16 million gallons. The value of the product of California wineries at the consumer level is about 500 million dollars per year.

52. Directly related to the production of California wine as a source of revenue to the community is a host of commercial, transportation and financial interests. In the aggregate, these related interests annually turn over in excess of 80 million dollars. In California alone there are about 35,000 business establishments engaged in the distribution and sale of wine. The economic interrelationships are such that the entire economy of the State of California is affected by the prosperity or depression of its wine industry.

D. Interstate Trade Barriers Against Wine Have Become a Matter of National Importance.

53. The great bulk of California wine, about 80%, is sold in other states of the Union. Since 1940 the resulting interstate commerce has been increasingly the subject of restraint and discriminatory legislation by other states which have erected trade barriers of

various kinds to protect local wine producers against the competition of California wineries. Such discriminatory legislation has been enacted in some 28 states and there is pressure in other states for the enactment of similar legislation. The legislative pattern includes discriminatory license fees, excise taxes and merchandising restrictions. At least two other states have already adopted the technique utilized by the State of Washington.

54. In May 1955, the California Legislature passed a concurrent resolution (Calif. Stats. 1955, ch. 214, a copy of which is annexed hereto as Exhibit C) asserting the comprehensive public interest of the State in the wine industry. It declared that unless trade barriers against wine were abated "great, lasting, and irreparable harm" would be done to the State of California. The resolution requested the Governor, the Director of the Department of Agriculture, and the Attorney General of the State to invoke the authority of their offices in their discretion "to the end that such discriminatory trade barriers be removed and eliminated so as to secure the free and unrestricted access of the wines of California to the national market; . . ." This complaint is filed in response to the foregoing resolution to discharge, in an appropriate manner, the duty and responsibility of the State arising from sections 1300.11(d) and 1300.15(b)(8) of the California Agricultural Code as implemented by its Wine Marketing Order.

VIII.

THE NEED FOR INVOKING THE ORIGINAL JURISDICTION OF THIS COURT.

55. Acting through its Governor, its Director of Agriculture, and its Wine Advisory Board, for many years the State of California has sought to persuade officials of the State of Washington to take appropriate action to end the discriminations and trade barriers against California wine created by the laws and official acts of that state. The only result of such efforts to obtain an amicable settlement of this controversy has been a measure of success in forestalling increased discriminations and additional trade barriers. None of the statutes, regulations and official acts of the State of Washington herein complained of have been modified to eliminate or even lessen their discriminatory and adverse treatment of California wine transported into the State of Washington.

56. Adequate and proper relief cannot, in the circumstances of this case, be obtained by suit against any particular agency or official of the State of Washington. The Washington statute commands all county and municipal peace officers throughout the State, as well as designated officials of state government, to enforce and prosecute violations of the statutes and regulations herein complained of (Rev. Code Wash. § 66.44.030).

57. There is no private litigation pending which involves the issues raised herein.

58. Plaintiff is without any plain, adequate or speedy remedy at law, is suffering and will continue

to suffer irreparable injury, and can be fully protected in the enjoyment of its rights only by the decrees and orders of this Court.

Wherefore, Plaintiff prays:

(a) That the State of Washington and all persons purporting to act pursuant to and by virtue of its authority be perpetually restrained and enjoined from enforcing any of its said discriminatory and unconstitutional statutes, regulations and other official acts.

(b) For such other and further relief as this Court may deem just and equitable.

Dated, February 11, 1958.

EDMUND G. BROWN,
Attorney General of the State of California,
WALLACE HOWLAND,
Assistant Attorney General of the State of California,
LEONARD M. SPERRY, JR.,
Deputy Attorney General of the State of California,
Attorneys for Plaintiff.

(Appendices A, B, C and D Follow.)

Appendix A

TEXT OF PERTINENT STATUTES AND REGULATIONS OF THE STATE OF WASHINGTON.

Statutes

The following Sections of the Revised Code of Washington are relevant to this proceeding:

66.04.110 "Domestic winery." "Domestic winery" means a place where wines are manufactured or produced within the state from fruits or fruit products all of which were grown within the state.

66.04.120 "Domestic wines." "Domestic wines" means wines manufactured or produced within the state in a licensed domestic winery.

66.04.360 "Wine." "Wine" means any alcoholic beverage obtained by fermentation of fruit (grapes, berries, apples, etc.) or other agricultural product containing sugar, to which any saccharine substances may have been added before, during, or after fermentation, and containing not more than seventeen percent of alcohol by weight, including sweet wines fortified with wine spirits, such as port, sherry, muscatel, and angelica.

66.04.370 "Wine wholesaler." "Wine wholesaler" means a person who buys wine from a vinter or winery located either within or beyond the boundaries of the state for the purpose of selling it as permitted by this title, or who represents such vinter or winery as agent.

66.08.020 Liquor control board to administer. The administration of this title, including the general control, management, and supervision of all state liquor stores, is vested in the liquor control board.

66.08.030 Regulations. For the purpose of carrying into effect the provisions of this title according to their true intent, or of supplying any deficiency therein, the board may make such regulations not inconsistent with the spirit of this title as are deemed necessary or advisable. All regulations so made shall be a public record and filed in the office of the secretary of state, and together with a copy of the law as contained in this title shall forthwith be published in pamphlets, which pamphlets shall be distributed free at all liquor stores and as otherwise directed by the board. When so filed and published they shall have the force and effect of statute.

66.08.050 Powers of board in general. The board, subject to the provisions of this title and the regulations, shall

. . .

(5) determine the nature, form, and capacity of all packages to be used for containing liquor kept for sale;

. . .

66.08.060 Board cannot advertise liquor. The board shall not advertise liquor in any form or through any medium whatsoever. The board may adopt any and all reasonable regulations as to the kind, character, and location of liquor advertising.

66.16.010 Board may establish—Standard as to prices. There shall be established at such places throughout the state as the board deems advisable, stores to be known as "state liquor stores," for the sale of liquor in accordance with the provisions of this title and the regulations.

The prices of all liquor shall be fixed by the board from time to time so that the net annual

revenue received by the board therefrom shall not exceed thirty-five percent.

66.24.210 Domestic wines may be sold direct to retail licensees. All wines manufactured or produced in domestic wineries may be sold by the manufacturer or producer thereof direct to persons holding licenses entitling them to sell wine at retail under the provisions of this title, or to licensed domestic wine wholesalers, or to licensed domestic wineries.

No wines except domestic wines shall be sold within the state except to the liquor control board or by the board through the state liquor stores.

66.24.370 Wine retailer's license—Class F. There shall be a wine retailer's license to be designated as class F license to sell wine in bottles and original packages, not to be consumed on the premises where sold, at any store other than state liquor stores. Such licensee shall pay to the state liquor stores for such wines the current retail price. The fee shall be thirty-five dollars per year. The holder of a class A or a class B license shall be entitled to the privileges permitted in this section by paying an annual fee of ten dollars for each store.

66.24.410 Terms defined for class H license purposes. (1) "Spirituous liquor," as used in RCW 66.24.400 to 66.24.470, inclusive, means "liquor" as defined in RCW 66.04.200, except "wine" and "beer" sold as such.

. . .

66.24.440 Purchase of liquor by class H licensees. Each class H licensee shall be entitled to purchase any spirituous liquor items saleable under such class H license from the board at a

discount of not less than fifteen percent from the retail price fixed by the board, together with all taxes.

66.28.050 Solicitation of orders prohibited—Exceptions. No person shall canvass for, solicit, receive, or take orders for the purchase or sale of any liquor, or act as agent for the purchase or sale of liquor, but this shall not apply to agents dealing with the board, or to the receipt or transmission of a telegram or letter by any telegraph agent or operator or post office employee in the ordinary course of his employment as such agent, operator, or employee.

Nothing in this title shall prevent any wholesaler, by his or its authorized agent, from soliciting orders from holders of licenses entitling them to sell beer; nor prevent any domestic winery, domestic wine wholesalers or their proprietors, agents, and employees from soliciting orders of persons holding licenses entitling them to sell wine at retail.

66.44.030 Local officers to enforce title. All county and municipal peace officers are hereby charged with the duty of investigating and prosecuting all violations of the laws and regulations relating to the manufacture, importation, transportation, possession, distribution, and sale of liquor. . . .

Regulations

The following Revised Rules and Regulations (Wash. State Printing Plant, 1956) duly adopted and promulgated by the Washington State Liquor Control Board pursuant to the foregoing statutes are pertinent to this proceeding:

(32) Records—Purchases—Reports

. . .

(d) No retail licensee shall purchase wine except from state liquor stores or from a duly licensed domestic wine wholesaler or a duly licensed domestic winery. No domestic wine shall be purchased from a domestic winery or a domestic wine wholesaler at a price differing from the price for the container of wine as shown in the price posting filed in accordance with section (81) of the regulations. No retail licensee may return wine to a wine wholesaler or to a domestic winery except in accordance with the provisions of section (83) of the regulations.

(66) Containers—Sizes and Types Permitted

All domestic wine sold by a domestic winery for consumption in the state shall be sold in bottles or glass containers of the following sizes: One-tenth gallon, one-eighth gallon, one-fifth gallon, one-fourth gallon, one-half gallon, and one gallon; and also in 12-oz. and 24-oz. round bottles.

No domestic winery or domestic wine wholesaler shall, without permission of the board, adopt or use any packages for wine differing in sizes and capacities from the following classification, to-wit: 24 1/10 gal., 12 1/10 gal., 24 1/8 gal., 12 1/8 gal., 12 1/5 gal., 12 1/4 gal., 6 1/2 gal., and 4 1 gal.; and also 24 12-oz., 12 12-oz., and 12 24-oz. round bottles.

For taxing purposes and in all reports to the board, the above enumerated designations of package sizes, and no others, shall be used.

(81) Wine Price Posting

Every domestic winery shall file with the board at its office in Olympia a "wine price posting"

showing the delivered prices at which any and all brands of wine offered for sale by such domestic winery shall be sold within the state, which prices shall be uniform for all retailers within the state. All price postings shall be made upon forms prescribed and furnished by the board and shall set forth:

(a) All brands, types and sizes of bottles or glass containers of wine offered for sale by such domestic winery, which bottles or glass containers shall be limited to the sizes permitted in Regulation (66).

(b) The delivered sale prices thereof within the state, including allowances, if any, for returned empty bottles or glass containers.

No domestic winery nor domestic wine wholesaler shall sell or offer for sale any bottle or glass container of domestic wine at a price differing from the price of such bottle or glass container of domestic wine as shown in the price posting then in effect filed by the domestic winery whose label appears on such bottle or glass container.

No price posting shall become effective until ten days after the actual filing thereof with the board. In the event a price posting is filed before a previous one has become effective, the subsequent filing shall nullify said previous price posting.

No price posting involving quantity discounts shall be made.

All price postings filed as required by this regulation shall at all times be open to inspection to all trade buyers within the State of Washing-

ton and shall not in any sense be considered confidential.

Any provision of this regulation may by order of the board be suspended or modified without notice to meet emergencies.

(113) Salesman—Prohibited Practices—Penalties.

. . .

(d) No manufacturer, wholesaler or distributor of liquor, or salesman, agent or representative thereof, except the authorized agent of a licensed beer wholesaler, brewery or beer importer, or of a licensed domestic winery or domestic wine wholesaler, shall, directly or indirectly, by mail or otherwise, contact or solicit any retail licensee or any employee thereof for the purpose of promoting or inducing the sale of any liquor whatsoever nor grant, allow, pay or rebate, directly or indirectly, any cash or merchandise to any licensee to induce or promote the sale of liquor, including the payment of tips to licensees or their employees and the purchasing of drinks "for the house."

(e) Upon the infraction of any of the foregoing regulations by any salesman, agent or representative, the board may cancel the credentials issued to such salesman, agent or representative and may remove his company's products from the sales list of the board.

Appendix B

BUDGET—CALIFORNIA WINE MARKETING ORDER AS AMENDED, 1957-1958 MARKETING SEASON.

BUDGET

Wine Marketing Order as Amended 1957-1958 Marketing Season July 1, 1957 through June 30, 1958

Estimated Income:	Expense	Advertising	Total
Carry Over From 1956-1957 Marketing Season		803,206.00	803,206.00
Estimated Collections July 1, 1957 Through June 30, 1958 (Based on 120,000,000 Gallons)	154,809.00	1,945,191.00	2,100,000.00
Total Estimated Cash July 1, 1957 Through June 30, 1958	154,809.00	2,748,397.00	2,903,206.00
Less One Month Deferred Collections		171,542.00	171,542.00
Estimated Cash Available July 1, 1957 Through June 30, 1958	154,809.00	2,576,855.00	2,731,664.00

A/C#	Budget Allotments for Salaries & Wages	Administration	Advertising			
1.1	Clerical & Office	27,040.00	[illegible]			
1.2	Field Enforcement Representatives	13,860.00				
1.5	Field Service Representatives		157,000.00			
1.6	Administration	13,200.00				
	Total Salaries & Wages	54,100.00	208,265.00	54,100.00	208,265.00	262,365.00
	Materials & Supplies					
2.1	Clerical & Office and Advertising	2,174.00	41,000.00	2,174.00	41,000.00	43,174.00
	Service & Expense					
3.1	Miscellaneous	9,206.00	35,988.00			
3.1F	Research, Market Survey, Publicity & Educational Program	61,829.00	678,671.00			

3.1G	Medical Research		69,500.00			
3.1J	Viticultural & Oenological Research		6,000.00			
3.5	Freight, Cartage & Express	100.00	15,000.00			
3.6	Postage	500.00	14,600.00			
3.9A	Travel, Office, Field Enforcement, Board Members	4,800.00	2,000.00			
3.9E	Travel: Field Service		35,000.00			
3.9M	Travel: Mileage	1,000.00	35,000.00			
3.10	Automobile Expense	1,500.00				
3.29	Advertising Agency		980,000.00			
3.39	Production & Distribution of Wine Films		80,000.00			
3.40	Charges to Prior Years	100.00	100.00			
3.45	Wine & Allied Industries Conventions & Fairs		10,000.00			
3.48	Consumer Taste Preference Research		20,000.00			
3.53	Trade Barrier Special Litigation		20,037.00			
3.54	Grape Crop Surveys		15,000.00			
3.55	Wine Quality Research		25,000.00			
3.56	Bulk Aging Research		10,000.00			
3.57	Technical Translations		600.00			
3.20	Departmental Administrative Expense	7,000.00				
3.21	Bureau of Markets	7,500.00				
3.26	Pro-Rata: Attorney General	3,000.00				
	Total Service & Expense	96,535.00	2,052,496.00	96,535.00	2,052,496.00	2,149,031.00
	Property & Equipment					
4.1	Administrative & Advertising	2,000.00	2,982.00	2,000.00	2,982.00	4,982.00
	Total Expenses	154,809.00	2,304,743.00	154,809.00	2,304,743.00	2,459,552.00
	Reserve for Contingencies				272,112.00	272,112.00
				154,809.00	2,576,855.00	2,731,664.00

Appendix C

CALIFORNIA SENATE CONCURRENT RESOLUTION NO. 98—RELATIVE TO DISCRIMINATORY TRADE BARRIERS.

California Statutes 1955, Chapter 214

[Filed with Secretary of State, June 8, 1955.]

WHEREAS, It has been the public policy of the State of California, ever since its admission to the Union in 1850 to stimulate and encourage the fullest development of its resources, to promote its agriculture and commerce and to secure to its people a high standard of life; and

WHEREAS, The soil and climate of the State are more hospitable than any other area the world over to the growing of grapes of all types and varieties for domestic use, for unfermented juice, for conversion into raisins and for processing into a wide spectrum of wines for appetizer, table and dessert use, and there has been a sound and continuous growth of the wine industry in the State of California; and

WHEREAS, The area upon which grapes of different kinds are now grown covers an area of approximately 458,900 bearing acres of vineyards in 47 of the 58 counties of the State of California, being more than one-third of all the acreage in the State of California planted to fruits and nuts, and the State of California being the largest fruit-growing state in the United States of America; and

WHEREAS, Grapes have a farm value in excess of 107 million dollars, and the annual return from

grapes to the farmers of the State of California is in excess of 130 million dollars; and

WHEREAS, From 40 percent to 60 percent of the annual grape crop of the State of California is used for wine and in 1952, of a total grape crop of 2,967,000 tons, more than 1,201,000 tons were crushed for wine, and in the year 1953, of a total grape crop in excess of 2,400,000 tons, more than a million tons were crushed for wine; and

WHEREAS, The grape and wine industry in the State of California represents taxable property of a value in excess of 500 million dollars, in addition to the taxes paid to the State of California and various counties on wine inventories; and

WHEREAS, The California grape and wine industry affords year-round employment to more than 111,000 persons receiving annual wages of approximately 157 million dollars; and

WHEREAS, The wine industry is enmeshed into the economy of the State of California and directly or indirectly is a source of revenue to a host of commercial, transportation and financial interests in an annual amount in excess of 80 million dollars, and the whole economy of the State of California is affected by the prosperity or depression of the wine industry; and

WHEREAS, From the time since California became a state it has introduced new types of vines from Europe, developed insecticides, engaged in experimental work to promote the health of growing

plants, created new varieties and types of vines, provided information to growers of grapes and vintners and created a system of orderly marketing and directly concerned itself with promoting the industry, with the result that a number of agencies of the State Government, including the Department of Agriculture, the University of California and the Agricultural College at Davis are engaged in activities to aid in its development and progress; and

WHEREAS, A number of states of the Union have employed statutes of their legislatures to set up trade barriers to the end of abridging or prohibiting the entrance of California wines into their markets; and

WHEREAS, The convention which drew up the Constitution of the United States was called for the very purpose of eliminating the trade barriers set up between the several states, the Constitution itself through numerous provisions in that instrument seeks to make of the continental United States a single free trade zone, and to assure to the products of every lawful industry access to the national market; and

WHEREAS, Unless the power of a state in the Union to set up trade barriers against commodities produced in other states is decreed to be unlawful, acts of the states in setting up trade barriers threaten seriously to impair the integrity of the national economy to the detriment of the State and people of California; and

WHEREAS, The State of California, as a sovereign and as Parens Patriae, has over the decades

formulated a public policy for the promotion of its agriculture and the welfare of its people, and trade barriers such as those mentioned above threaten to drive a wedge between this policy and the results which naturally may be expected to flow from it; and

WHEREAS, The persons and interest which are adversely affected by trade barriers set up by several states are more comprehensive than the parties whose stakes in the industry are so direct and immediate that they have causes of action of their own; and

WHEREAS, The interest of the State of California as sovereign and as Parens Patriae is more comprehensive than the interest of private parties which have a stake in the wine industry, and the interest of the State is of a different character from that of the individuals who are immediately concerned; and

WHEREAS, Unless relief is given from the trade barriers set up by several states, and unless the power of the states to set up such trade barriers is abated, great, lasting and irreparable harm will be done to the State of California and to its residents; now, therefore be it

Resolved by the Senate of the State of California the Assembly thereof concurring, That the grape and wine industry of the State of California is an essential and integral part of the economy of the State of California and is affected with the public interest; and be it further

Resolved, That the Legislature of the State of California hereby respectfully requests that the Governor

of the State of California, the Director of the Department of Agriculture and the Attorney General of the State of California direct their attention to the problem of discriminatory trade barriers against California wines wherever the same exist, and, in the exercise of their sound discretion invoke the authority of their respective offices to the end that such discriminatory trade barriers be removed and eliminated so as to secure the free and unrestricted access of the wines of California to the national market; and be it further

Resolved, That the Secretary of the Senate be directed to transmit copies of this resolution to the Governor of the State of California, the Director of Agriculture, and the Attorney General of the State of California.

Appendix D

TEXT OF PERTINENT PROVISIONS OF CALIFORNIA AGRICULTURAL CODE AND EXCERPT FROM WINE MARKETING ORDER.

The following Sections of the California Agricultural Code are pertinent to this proceeding:

> **21 Director: Appointment and tenure: Salary: Bond.** The department shall be conducted by an executive officer known as the Director of Agriculture. The director shall be appointed by and hold office at the pleasure of the Governor . . .

The following Sections are provisions of the California Marketing Act of 1937 (Calif. Stats., 1937, C. 404, § 1, p. 1329, effective June 15, 1937), as amended:

> **1300.10 Legislative declarations.** (a) It is hereby declared that the marketing of agricultural commodities in this State in excess of reasonable and normal market demands therefor; disorderly marketing of such commodities; improper preparation for market and lack of uniform grading and classification of agricultural commodities; unfair methods of competition in the marketing of such commodities; and the inability of individual producers to maintain present markets or to develop new or larger markets for California grown agricultural commodities, results in an unreasonable and unnecessary economic waste of the agricultural wealth of this State. Such conditions and the accompanying waste jeopardize the future continued production of adequate food supplies for the people of this and other States, and prevent agricultural

producers from obtaining a fair return from their labor, their farms and the agricultural commodities which they produce. As a consequence, the purchasing power of such producers has been in the past, and may continue to be in the future, unless such conditions are remedied, low in relation to that of persons engaged in other gainful occupations within this State. Agricultural producers are thereby prevented from maintaining a proper standard of living and from contributing their fair share to the support of the necessary governmental and educational functions, thus tending to increase unfairly the tax burdens of other citizens of this State.

(b) These conditions vitally concern the health, peace, safety and general welfare of the people of this State. It is hereby declared to be the policy of this State to aid agricultural producers in preventing economic waste in the marketing of their agricultural commodities, to develop more efficient and equitable methods in the marketing of agricultural commodities and to aid agricultural producers in restoring and maintaining their purchasing power at a more adequate, equitable and reasonable level.

(c) The marketing of agricultural commodities within this State is hereby declared to be affected with a public interest. The provisions of this chapter are enacted in the exercise of the police powers of this State for the purpose of protecting the health, peace, safety and general welfare of the people of this State.

1300.11 Purposes of chapter. The purposes of this chapter are:

. . .

(d) To provide methods and means for the maintenance of present markets or for the development of new or larger markets for agricultural commodities grown within this State or for the prevention, modification or elimination of trade barriers which obstruct the free flow of such agricultural commodities to market.

. . .

1300.12 Definitions.

. . .

(c) "Agricultural commodity" means any and all agricultural, horticultural (including floricultural), viticultural (including wine) and vegetable products produced in this State, or any class, variety or utilization thereof, either in their natural state or as processed by a producer for the purpose of marketing such product or by a processor as herein defined, and including bees and honey and manufacturing milk as such milk is defined in Section 452, Chapter 2, Division 4 of this code, but not including timber or timber products.

. . .

1300.12a Purpose of 1941 amendment of § 1300.12: Orders and acts confirmed.

The legislature hereby declares that the addition of the phrase "(including wine)" in subdivision (c) of Section 1300.12 is made for the purpose of clarification only and is in no wise to be construed or interpreted as an indication that wine is not an agricultural commodity as defined in that subdivision as originally enacted in Chapter 404, Statutes of 1937, and as heretofore amended. The Legislature hereby further declares that at the time of the original enact-

ment of said subdivision (c) and at all times since, it intended that wine be, and wine was, included within the definition of the term "agricultural commodity."

. . .

1300.13 Administration and enforcement of Act: Powers of director: Marketing orders and agreements. (a) The Director of Agriculture shall administer and enforce the provisions of this act and shall have and may exercise any or all of the administrative powers conferred by Sections 11180 to 11191, inclusive, of the Government Code upon the head of a department of the State. In order to effectuate the declared purposes of this act, the Director of Agriculture is hereby authorized to issue, administer and enforce the provisions of marketing orders hereunder regulating producer marketing or the handling of agricultural commodities within this State.

. . .

1300.15 Advisory board: Optional provisions of marketing order.

(a) (1) Any marketing order issued pursuant to this chapter shall provide for the establishment of an advisory board to assist the director in the administration of any marketing order. The members of the board shall be appointed by the director and may hold office at the pleasure of the director. . . .

(2) . . . The director may authorize such board: . . . to incur such expenses, to be paid by the director from moneys collected as herein provided, as the director may deem necessary and proper to enable such board properly to perform

such of its duties as are authorized herein. The duties of any such board shall be administrative only and may include only the following:

a. Subject to the approval of the director to administer such marketing order.

. . .

(b) Subject to the legislative restrictions and limitations set forth herein any marketing order issued by the director pursuant to this chapter may contain any or all of the following provisions for regulating or providing methods for regulating producer marketing or the handling or any of the operations of processing or distributing by handlers of any agricultural commodity within this State, but no others:

. . .

(8) Provisions for the establishment of plans for advertising and sales promotion to maintain present markets or to create new or larger markets for agricultural commodities grown in the State of California, or for the prevention, modification or removal of trade barriers which obstruct the free flow of agricultural commodities to market. The director is hereby authorized to prepare, issue, administer and enforce plans for promoting the sale of any agricultural commodity.

Provided, that any such plan shall be directed toward increasing the sale of such commodity without reference to a particular brand or trade name, and

Provided further, that no advertising or sales promotion program shall be issued by the director which shall make use of false or unwarranted claims in behalf of any such product, or dis-

parage the quality, value, sale or use of any other agricultural commodity.

1300.17 Assessments: Collection and disbursement: Investment or reinvestment of moneys deposited.

. . .

(b) Each marketing order which authorizes carrying out advertising and sales promotion plans shall provide for the levying and collection of assessments in sufficient amounts to defray the expenses of such activities. Each such marketing order shall indicate the maximum rate of any such assessment and the proportion, if any, payable by each producer and handler directly regulated or affected by such marketing order. The advisory board appointed by the director to assist the director in administering each marketing order shall recommend to the director, from time to time, budgets to cover such expenses and the assessment rate necessary to provide sufficient funds. If the director finds that each such budget and assessment rate are proper and equitable and will provide sufficient moneys to defray such expenses he may approve such budget and approve and levy such assessment. Any assessment so established shall be based upon the units in which such agricultural commodity is marketed or upon any other uniform basis which the director determines to be proper and equitable. Any assessment rates established hereunder shall be in amounts not to exceed four per cent (4%) of the gross dollar volume of sales by all producers or by all processors, distributors or other handlers of such agricultural commodity regulated by such marketing order during the

marketing season or seasons during which such marketing order is effective.

. . .

(f) Any moneys collected by the director pursuant to this act shall be deposited in a bank or banks, or other depository approved by the Director of Finance, allocated to each marketing order under which they are collected, and disbursed by the director only for the necessary expenses incurred by the advisory board and the director and approved by the director with respect to each such separate marketing order. Funds so collected shall be deposited and disbursed in conformity with appropriate rules and regulations prescribed by the director. The expenditure of such funds shall be exempt from the provisions of Section 16003 of the Government Code. All such expenditures by the director shall be audited at least annually by the Department of Finance and a copy of such audit shall be delivered within 30 days after the completion thereof to the Governor, the Director of Agriculture and the Controller. Any moneys in the State Treasury to the credit of the "State Marketing Act Trust Fund" shall be withdrawn and deposited in accordance with the provisions of this paragraph.

. . .

1300.19 Responsibility for administration of act: Penalties, remedies, procedures and actions: Authority of inspector: Disposition of lot failing to comply with marketing order requirements.

The Director of Agriculture shall be responsible for the administration and enforcement of this chapter.

The following penalties, remedies, procedures and actions shall apply in instances of violations and complaints of violations of the provisions of this chapter or of any marketing order or the rules and regulations issued by the director under the authority of this chapter or any marketing order issued and effective thereunder:

(a) Every person who violates any provision of this chapter or any provision of any marketing order duly issued by the director hereunder, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than fifty dollars ($50), nor more than five hundred dollars ($500), or by imprisonment of not less than 10 days nor more than six months, or by both such fine and imprisonment. Each violation during any day shall constitute a separate offense.

. . .

The following is the full text of Article III, Section A, of the "California Marketing Order for Wine, as Amended—Effective July 1, 1957", approved by the California Director of Agriculture, June 4, 1957:

Advertising and Sales Promotion. There shall be established plans for advertising and sales promotion to maintain present markets or to create new or larger markets for wine produced in the State of California. Such plans may consist, insofar as funds are available, and as the Board may recommend and the Director approve, of programs of advertising, dealer service, trade promotion, publicity, market development and expansion activities for the prevention, modification or elimination of trade barriers

which restrict the free flow of wine produced in California to market, including the presentation of facts to and negotiations with State, Federal or foreign governmental agencies on matters which affect the marketing of wine produced in this State; also such other plans as may be recommended by the Board and approved by the Director pursuant to this Marketing Order, as Amended; *provided,* that any such plans shall be directed toward increasing the sale of such wine without reference to any particular private brand or trade name; and *provided, further,* that no advertising or sales promotion program shall be issued which shall make use of false or unwarranted claims in behalf of wine, or disparage the quality, value, sale or use of any other agricultural commodity.

Certificate of Service

The undersigned, a member of the bar of the Supreme Court of the United States, and one of the counsel of record for the plaintiff, hereby certifies:

That on the 11th day of February, 1958, he served the within and foregoing "Motion for Leave to File a Complaint" and attached "Complaint" upon the State of Washington, the defendant, as prescribed by Rules 9 and 33 (par. 3(b)) of said Court:

He deposited at the post office at San Francisco, California, two copies of the said Motion and Complaint, securely enclosed in an envelope, air mail postage prepaid, addressed to each of the following officials of said defendant State at his post office address, as shown below:

Honorable Albert D. Rosellini,
Governor of the State of Washington,
State Capitol,
Olympia, Washington.

Honorable John J. O'Connell,
Attorney General of the State of Washington,
State Capitol,
Olympia, Washington.

Edmund G. Brown.